

## SETTLEMENT AGREEMENT

### I. PARTIES

This Settlement Agreement (Agreement) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General (OIG-HHS) of the Department of Health and Human Services (HHS) (collectively the "United States"); and Keith D. Rose, M.D. ("Dr. Rose") and Northern Edge Institute of Rehabilitation ("Northern Edge") (hereafter referred to as "the Parties"), through their authorized representatives.

### II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

A. Dr. Rose provides rehabilitation and pain management treatment to beneficiaries of the Medicare Program and Medicaid Program, doing business as Northern Edge Institute of Rehabilitation

B. The United States contends that Dr. Rose and Northern Edge submitted or caused to be submitted claims for payment to the Medicare Program (Medicare), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395hhh, as well as the Medicaid Program (Medicaid), 42 U.S.C. §§ 1396-1396v.

C. The United States contends that it has certain civil claims, as specified in Paragraph 3, below, against Dr. Rose and Northern Edge for engaging in the following conduct during the period from January of 2000 to June of 2005: improperly billing the Medicaid and Medicare programs for nerve conduction studies by billing Current Procedural Terminology ("CPT") code 95900 (nerve conduction, amplitude and latency/velocity study, each nerve; motor, without F-wave study) in conjunction with CPT code 95903 (nerve conduction, amplitude and

latency/velocity study, each nerve; motor, with F-wave study) as if two separate tests were administered, when in fact the 95900 service should have been bundled within the 95903 service (hereinafter referred to as the "Covered Conduct").

D. The United States contends also that it has certain administrative claims against Dr. Rose and Northern Edge for engaging in the Covered Conduct, as specified in Paragraphs 3 and 4, below

E. This Agreement is not a concession by the United States that its claims are not well founded.

F. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, the Parties reach a full and final settlement pursuant to the Terms and Conditions below.

### III. TERMS AND CONDITIONS

1. Dr. Rose agrees to pay to the United States \$22,350 (the "Settlement Amount"), together with interest, as follows.

a. Dr. Rose shall deliver a certified or cashier's check in the amount of **\$1,862.50** made payable to the United States Department of Justice and delivered to Margaret M Chiara, United States Attorney for the Western District of Michigan, P.O. Box 208, Grand Rapids, MI 49501-0208, with the notation 2007Z00003. This payment shall be paid no later than the Effective Date of this Agreement

b. Beginning with the following month, Dr. Rose shall make eleven monthly installment payments of \$1,862.50, plus accrued interest, on or before the first of the

month until the Settlement Amount is paid in full. Interest shall accrue at the rate of 4.75% on a daily basis from the Effective Date of the Settlement Agreement until payment of the Settlement Amount and interest in full or until Dr. Rose and Northern Edge enter into Default, as defined in Paragraph 2 below. Provided that Dr. Rose timely pays each installment payment, the amount of each installment payment shall be **\$1907.00**. The amount of the final installment payment may be adjusted to account for any overpayment, underpayment, or untimely payment by Dr. Rose. Dr. Rose shall deliver each installment payment via a certified or cashier's check made payable to the United States Department of Justice and delivered to Margaret M. Chiara, United States Attorney for the Western District of Michigan, P.O. Box 208, Grand Rapids, MI 49501-0208, with the notation 2007Z00003.

2. In the event that Dr. Rose and Northern Edge fail to pay any amount as provided in Paragraph 1 within five (5) business days of the date upon which such payment is due, Dr. Rose and Northern Edge shall be in default of their payment obligations (Default). The United States will provide written notice of the Default, and Dr. Rose and Northern Edge shall have an opportunity to cure such Default within five (5) business days from the date of receipt of the notice. Notice of Default will be delivered to Keith Rose, M.D., Northern Edge Institute of Rehabilitation, P.C., 2390 Mitchell Park Drive, Suite B, Petoskey, Michigan, 49770, or to such other representative as Dr. Rose and Northern Edge shall designate in advance in writing. If Dr. Rose and Northern Edge fail to cure the Default within five (5) business days of receiving the Notice of Default, the remaining unpaid balance of the Settlement Amount shall become immediately due and payable, and interest shall accrue at the rate of 12% per annum.

compounded daily from the date of Default on the remaining unpaid total (principal and interest balance). Dr. Rose and Northern Edge shall consent to a Consent Judgment in the amount of the unpaid balance, and the United States, at its sole option, may: (a) offset the remaining unpaid balance from any amounts due and owing to Dr. Rose and Northern Edge by any department, agency, or agent of the United States at the time of the Default; or (b) exercise any other rights granted by law or in equity, including the option of referring such matters for private collection. Dr. Rose and Northern Edge agree not to contest any offset imposed and not to contest collection action undertaken by the United States pursuant to this Paragraph, either administratively or in any state or federal court. Dr. Rose and Northern Edge shall pay the United States all reasonable costs of collection and enforcement under this Paragraph, including attorney's fees and expenses.

3. Subject to the exceptions in Paragraphs 4 and 5, below, in consideration of the obligations of Dr. Rose set forth in this Agreement, conditioned upon Dr. Rose's full payment of the Settlement Amount, and subject to Paragraph 15, below (concerning bankruptcy provisions commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release Dr. Rose and Northern Edge from any civil or administrative monetary claim the United States has or may have under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; the common law theories of payment by mistake, unjust enrichment, and fraud, for the Covered Conduct.

4. In consideration of the obligations of Dr. Rose and Northern Edge set forth in this Agreement and the Integrity Agreement (IA) entered into between OIG-HHS and Dr. Rose and Northern Edge, conditioned upon Dr. Rose's and Northern Edge's full payment of the Settlement Amount, and subject to Paragraph 15, below (concerning bankruptcy provisions commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), the OIG-HHS agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from Medicare, Medicaid, and other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against Dr. Rose or Northern Edge under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law) or 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion for fraud, kickbacks, and other prohibited activities) for the Covered Conduct, except as reserved in Paragraph 5, below, and as reserved in this Paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude Dr. Rose and Northern Edge from Medicare, Medicaid, or other Federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based upon the Covered Conduct. Nothing in this Paragraph precludes the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 5 below.

Notwithstanding the foregoing, in the event of Default, as defined in Paragraph 2, above, OIG-HHS may exclude Rose and Northern Edge from participating in all Federal health care programs until Rose and Northern Edge pay the Settlement Amount and reasonable costs as set forth in Paragraph 2 above. Such exclusion shall have national effect and shall also apply to all other federal procurement and nonprocurement programs. Federal health care programs shall not

pay anyone for items or services, including administrative or management services, furnished, ordered, or prescribed by Rose and Northern Edge in any capacity while Rose and Northern Edge are excluded. This payment prohibition applies to Rose and Northern Edge, anyone who employs or contracts with Rose, Northern Edge, or both, any hospital or other provider where Rose, Northern Edge, or both provide services, and anyone else. The exclusion applies regardless of who submits the claims or other request for payment. Rose and Northern Edge shall not submit or cause to be submitted to any Federal health care program any claim or request for payment for items or services, including administrative and management services, furnished, ordered, or prescribed by Rose, Northern Edge, or both during the exclusion. Violation of the conditions of the exclusion may result in criminal prosecution, the imposition of civil monetary penalties and assessments, and an additional period of exclusion. Rose and Northern Edge further agree to hold the Federal health care programs, and all federal beneficiaries and/or sponsors harmless from any financial responsibility for items or services furnished, ordered, or prescribed by Rose, Northern Edge, or both. OIG-HHS will provide written notice of any such exclusion to Rose and Northern Edge. Rose and Northern Edge waive any further notice of the exclusion under 42 U.S.C. § 1320a-7(b)(7), and agree not to contest such exclusion either administratively or in any state or federal court. Reinstatement to program participation is not automatic. If at the end of the period of exclusion Rose and Northern Edge wish to apply for reinstatement, Rose and Northern Edge must submit a written request for reinstatement to OIG-HHS in accordance with the provisions of 42 C.F.R. §§ 1001.3001- 3005. Rose and Northern Edge will not be reinstated unless and until OIG-HHS approves such request for reinstatement.

5. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including Dr Rose and Northern Edge) are the following:

- a. Any civil, criminal, or administrative liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon such obligations as are created by this Agreement;
- f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services; and
- g. Any liability for failure to deliver goods or services due

6. Dr. Rose has provided sworn financial disclosure statements (Financial Statements) to the United States and the United States has relied on the accuracy and completeness of those Financial Statements in reaching this Agreement. Dr. Rose warrants that the Financial Statements are complete, accurate, and current. In the event the United States learns of asset(s) in which Dr. Rose had an interest at the time of this Agreement that were not disclosed in the Financial Statements, or in the event the United States learns of any

misrepresentation by Dr. Rose on, or in connection with, the Financial Statements, and in the event such nondisclosure or misrepresentation changes the estimated net worth set forth on the Financial Statements by \$1,118 or more, the United States may at its option: (a) rescind this Agreement and file suit based on the Covered Conduct; or (b) let the Agreement stand and collect the full Settlement Amount plus one hundred percent (100%) of the value of the net worth of Dr. Rose previously undisclosed. Dr. Rose agrees not to contest any collection action undertaken by the United States pursuant to this provision.

7. In the event that the United States, pursuant to Paragraph 6, above, opts to rescind this Agreement, Dr. Rose and Northern Edge agree not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that (a) are filed by the United States within 120 calendar days of written notification to Dr. Rose or Northern Edge that this Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on the Effective Date of this Agreement.

8. Dr. Rose and Northern Edge waive and shall not assert any defenses Dr. Rose or Northern Edge may have to any criminal prosecution or administrative action relating to the Covered Conduct, which defenses may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this Paragraph or any other provision of this Agreement constitutes an agreement by the United States



concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

9. Dr. Rose and Northern Edge fully and finally release the United States, its agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Dr. Rose or Northern Edge have asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof

10. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare carrier or intermediary or any state payer, related to the Covered Conduct; and Dr. Rose and Northern Edge agree not to resubmit to any Medicare carrier or intermediary or any state payer any previously denied claims related to the Covered Conduct, and agree not to appeal any such denials of claims

11. Dr. Rose and Northern Edge agree to the following:

a. Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395hhh and 1396-1396v; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Dr. Rose, Northern Edge, its present or former officers, directors, employees, shareholders, and agents in connection with the following shall be "unallowable costs" on government contracts and under

the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP):

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and any civil and criminal investigation(s) of the matters covered by this Agreement;
- (3) Dr. Rose's or Northern Edge's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and any civil or criminal investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement;
- (5) the payments Dr. Rose makes to the United States pursuant to this Agreement, including any costs and attorneys fees; and
- (6) the negotiation of, and obligations undertaken pursuant to the IA to:
  - (i) retain an independent review organization to perform annual reviews as described in Section III of the IA; and
  - (ii) prepare and submit reports to the OIG-HHS.

However, nothing in this Paragraph 11 a.(6) that may apply to the obligations undertaken pursuant to the CIA affects the status of costs that are not allowable based on any other authority applicable to Dr. Rose or Northern Edge. (All costs described or set forth in this Paragraph 11 a. are hereafter "unallowable costs.")

b     Future Treatment of Unallowable Costs: These unallowable costs shall be separately determined and accounted for by Dr. Rose and Northern Edge, and Dr. Rose and Northern Edge shall not charge such unallowable costs directly or indirectly to any contracts with the United States or any state Medicaid program, or seek payment for such unallowable costs through any cost report, cost statement, information statement, or payment request submitted by Dr. Rose or Northern Edge or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c     Treatment of Unallowable Costs Previously Submitted for Payment: Dr. Rose and Northern Edge further agree that within 90 days of the Effective Date of this Agreement they shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid and FEHBP fiscal agents, any unallowable costs (as defined in this Paragraph) included in payments previously sought from the United States, or any state Medicaid program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Dr. Rose or Northern Edge or any of its subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. Dr. Rose and Northern Edge agree that the United States, at a minimum, shall be entitled to recoup from Dr. Rose or Northern Edge any overpayment plus applicable interest and penalties as a result of the inclusion of such unallowable costs on previously-submitted cost reports, information reports, cost statements, or requests for payment.

Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by Dr. Rose or Northern Edge or any of its subsidiaries or affiliates on the effect of inclusion of unallowable costs (as defined in this Paragraph) on Dr. Rose's or Northern Edge's or any of its subsidiaries' or affiliates' cost reports, cost statements, or information reports. Nothing in this Agreement shall constitute a waiver of the rights of the United States to examine or reexamine the unallowable costs described in this Paragraph

12. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraph 13, below.

13. Dr. Rose and Northern Edge waive and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors based upon the claims defined as Covered Conduct.

14. Dr. Rose and Northern Edge warrant that they have reviewed their financial situation and that they currently are solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent following their payment to the United States of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Dr. Rose and

Northern Edge, within the meaning of 11 U.S.C. § 547(c)(1); and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which Dr. Rose or Northern Edge was or became indebted, on or after the date of this transfer, all within the meaning of 11 U.S.C. § 548(a)(1).

15. If, within 91 days of the Effective Date of this Agreement or any payment made under this Agreement, Dr. Rose or Northern Edge commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of Dr. Rose's or Northern Edge's debts, or seeking to adjudicate Dr. Rose or Northern Edge as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Dr. Rose or Northern Edge or for all or any substantial part of Dr. Rose's or Northern Edge's assets, Dr. Rose and Northern Edge agree as follows:

a. Dr. Rose's and Northern Edge's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. §§ 547 or 548, and Dr. Rose and Northern Edge shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) Dr. Rose's or Northern Edge's obligations under this Agreement may be avoided under 11 U.S.C. §§ 547 or 548; (ii) Dr. Rose or Northern Edge was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the United States hereunder; or (iii)

the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Dr. Rose or Northern Edge .

b. If Dr. Rose's or Northern Edge's obligations under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the United States, at its sole option, may rescind the releases in this Agreement, and bring any civil and/or administrative claim, action, or proceeding against Dr. Rose or Northern Edge for the claims that would otherwise be covered by the releases provided in Paragraphs 3 and 4, above. Dr. Rose and Northern Edge agree that (i) any such claims, actions, or proceedings brought by the United States (including any proceedings to exclude Dr. Rose or Northern Edge from participation in Medicare, Medicaid, or other Federal health care programs) are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceeding described in the first clause of this Paragraph, and Dr. Rose and Northern Edge shall not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) Dr. Rose and Northern Edge shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceedings that are brought by the United States within 120 calendar days of written notification to Dr. Rose or Northern Edge that the releases herein have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the effective date of this Agreement; and (iii) the United States has a valid claim against Dr. Rose or Northern Edge in the amount of \$1,408,521, and the United States may pursue its claim in the case, action, or

proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

c. Dr. Rose and Northern Edge acknowledge that their agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

16. Each Party to this Agreement shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

17. Dr. Rose and Northern Edge represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever and that Dr. Rose and Northern Edge understand their right to advice of counsel concerning this Agreement.

18. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement is the United States District Court for the District of Michigan, except that disputes arising under the IA shall be resolved exclusively under the dispute resolution provisions in the IA.

19. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

20. The individuals signing this Agreement on behalf of Dr. Rose and Northern Edge represent and warrant that they are authorized by Dr. Rose and Northern Edge to execute this Agreement. The United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

21. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

22. This Agreement is binding on the successors, transferees, heirs, and assigns of Dr. Rose and Northern Edge.

23. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

24. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

[SIGNATURE BLOCKS ON FOLLOWING PAGES]



THE UNITED STATES OF AMERICA

DATED: 3-12-07

BY: 

**RYAN D. COBB**  
Assistant United States Attorney  
Western District of Michigan

DATED: 3/29/07

BY: 

**GREGORY E. DEMSKE**  
Assistant Inspector General for  
Legal Affairs  
Office of Counsel to the  
Inspector General  
United States Department of  
Health and Human Services

**DEFENDANTS**

DATED: 03-09-07

BY: 

Keith D. Rose, M.D.  
3844 Grand Oaks Trail  
Petoskey, MI 48770

DATED: 03-09-07

BY: 

[Keith D. Rose]  
For Northern Edge Institute of  
Rehabilitation